

1 IAN M. SAMMIS  
 Attorney at Law  
 2 Cal. State Bar #45883  
 1108 Tamalpais Avenue, #1  
 3 San Rafael, CA 94901  
 (415) 457-4200  
 4 (415) 454-5294 fax

5 Attorney for Plaintiff  
 6 DENISE E. LINSKY

7 UNITED STATE UNITED STATES DISTRICT COURT  
 8 NORTHERN DISTRICT OF CALIFORNIA  
 9 SAN FRANCISCO DIVISION

10 DENISE E. LINSKY,	) Civil No. 10-05071 SI
Plaintiff,	)
11 v.	) NOTICE OF DISMISSAL AND REQUEST
	) FOR DISMISSAL WITHOUT PREJUDICE
12 MICHAEL J. ASTRUE,	) PURSUANT TO FED.R.CIV.P 41(a)
Commissioner of Social Security,	)
13 Defendant.	)

14  
 15 On November 9, 2010, Plaintiff Denise Linsky filed this *mandamus* petition to compel  
 16 the Social Security Administration's Appeals Council to act on a request for review that had  
 17 been pending for 18 months. At the time of seeking this Court's intervention, Plaintiff had asked  
 18 the Appeals Council to reconcile an October 6, 2010 grant of benefits (onset date April 24,  
 19 2010) with an April 29, 2009 denial of benefits decision—entered after this Court remanded a  
 20 partially favorable June 29, 2006 decision because of the ALJ's “improperly rejecting the  
 opinion of a treating physician,” [May 20, 2008 Order, Case N0. 07-cv-3482 SI, Dkt #8].

21 Plaintiff had filed her request for review of the April 2009 denial of benefits decision  
 22 with the Appeals Council on May 13, 2009, which sat without response. *Mandamus* was  
 23 warranted because: (1) the Appeals Council had failed to act on plaintiff's request for a year  
 24 and a half and (2) on September 6, 2010, the Social Security Administration demanded \$37,789  
 25 from plaintiff to reimburse benefits originally provided under the June 29, 2006 partially  
 26 favorable decision reviewed and remanded by this Court.

27 On February 14, 2011, the Appeals Council finally acted on Plaintiff's request for  
 28 review and remanded the April 29, 2009 denial of benefits decision for rehearing before a new  
 Administrative Law Judge and for compliance with this Court's prior remand order. [Dkt 13-1].

1 Accordingly, Plaintiff requests dismissal of the writ petition without prejudice, as the Appeals  
 2 Council has acted and such issues as remain may be addressed to the Appeals Council in the  
 3 first instance. (HALLEX I-3-7-1 and II-5-1-2 requires vacatur of the April 29, 2009 decision  
 4 in addition to remand to a new ALJ for consideration).

5 Pursuant to Rule 41 (a) of the Federal Rules of Civil Procedure, a plaintiff may  
 6 voluntarily dismiss an action without prejudice anytime prior to answer or motion for summary  
 7 judgment, as follows:

8 Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the United  
 9 States, an action may be dismissed by the plaintiff without order of court (i) by filing  
 10 notice of dismissal at any time before service by the adverse party of an answer or of a  
 11 motion for summary judgment, whichever first occurs, ... the dismissal is without  
 12 prejudice, except that a notice of dismissal operates as an adjudication upon the merits  
 13 when filed by a plaintiff who has once dismissed in any court of the United States or of  
 any state an action based on or including the same claim.

14 Fed.R.Civ.P., Rule 41(a)(1).

15 Defendant has neither answered nor moved for summary judgment. As the Appeals  
 16 Council's February 14, 2011 remand order provides the principle relief sought by plaintiff from  
 17 this Court, plaintiff dismisses and requests dismissal of the present proceeding without  
 18 prejudice.

19 Dated: March 8, 2011

20 Respectfully submitted,

21 S/Ian M. Sammis/  
 22 Attorney for Denise E. Linsky

